Recent developments in housing law

Repossessions by landlords on the rise; changed remedies for anti-social behaviour; new homelessness regulations in Wales; and important decisions on human rights, possession claims and homelessness applications. Nic Madge and Jan Luba QC provide their monthly round-up.

POLITICS AND LEGISLATION

Possession claims made by landlords

The latest statistics on possession claims brought by landlords in the county courts in England and Wales show that there were 11,307 repossessions by county court bailiffs in the first quarter of 2015 in landlord-initiated claims: *Mortgage and Landlord Possession Statistics Quarterly, England and Wales January to March 2015* (Ministry of Justice, May 2015). The total is up 8 per cent compared to the first quarter of 2014. In the same three months, 31,442 orders for possession were made in landlord claims.

Homelessness in Wales

The law relating to homelessness in Wales changed on 27 April 2015 with the commencement of Housing (Wales) Act 2014 Pt 2. The associated regulations and orders were only belatedly published and they include:

- the Homelessness (Intentionality) (Specified Categories) (Wales) Regulations 2015 SI No 1265;
- the Homelessness (Review Procedure) (Wales) Regulations 2015 SI No 1266;
- the Homelessness (Suitability of Accommodation) (Wales) Order 2015 SI No 1268; and
- the Housing (Wales) Act 2014 (Commencement No 3 and Transitory, Transitional and Saving Provisions) Order 2015 SI No 1272.

They all came into effect on 27 April 2015.

Housing and anti-social behaviour

On 1 June 2015, the law relating to gang injunctions was changed by the commencement of Serious Crimes Act 2015 s51. The reasons for the changes and their effects are explained in *Circular 008/2015: Serious Crimes Act 2015* (Home Office, March 2015) at paras 35–43. The Standing Committee for Youth Justice has published a free guide to the arrangements for anti-social behaviour injunctions under Anti-social Behaviour and Policing Act 2014 Pt 1: *SCYJ guide to the new anti-social behaviour powers* (SCYJ, February 2015). The Crown Prosecution Service (CPS) has published on its website its detailed legal guidance to the new criminal behaviour orders (CBOs), which replaced on-conviction ASBOs.

Failure to comply with an injunction is a contempt of court. On 26 March 2015, the Lord Chief Justice issued a new practice direction about the hearing and reporting of contempt applications: Practice Direction: Committal for Contempt of Court – Open Court. Among other requirements, all judgments on contempt applications are now transcribed and reported. This gives housing practitioners an opportunity to monitor the sentences being handed down for breach of anti-social behaviour injunctions. The cases reported since the practice direction was issued are collected on the Judiciary website.[1]

Legal aid in housing/community care cases

In April 2015, Care Act 2014 Pt 1 came into effect. It makes new community care provision for adults including the replacement of National Assistance Act 1948 s21. Legal aid providers with housing contracts from the Legal Aid Agency can assist clients with issues under Pt 1 if the client is homeless or threatened with homelessness. That is the result of Legal Aid, Sentencing and Punishment of Offenders Act 2012 Sch 1 paras 6 and 28. The terms of para 6 were amended to achieve this effect by the Care Act 2014 and Children and Families Act 2014 (Consequential Amendments) Order 2015 SI No 914 Sch 1 para 96.

Tenants who work from home

Small Business, Enterprise and Employment Act 2015 s35 is intended to remove the incentive for landlords to include an absolute covenant against business use in residential tenancies. The act establishes a new concept of the 'home business', which may be carried on without the dwelling coming within the ambit of the security of tenure provisions of Landlord and Tenant Act 1954 Pt 2. Section 35 will be brought into force separately in England and in Wales.

Housing and human rights

A new report, from the organisation JustFair UK, considers UN human rights obligations relating to housing: *Protecting the Right to Housing in England – A Context of Crisis* (JustFair UK, April 2015).

The organisation Children's Rights Alliance for England (CRAE) has produced a new free human rights briefing: *Children's human rights and housing* (CRAE, April 2015).

Adaptations for the disabled

Applications for disabled facilities grants should be determined within the statutory maximum six months period from the making of an application: Housing Grants, Construction and Regeneration Act 1996 s34. A new report suggests that large numbers of applications are being processed outside that timescale: *The Long Wait for a Home* (Leonard Cheshire Disability, April 2015).

Regulating social landlords

Revised arrangements for regulating social landlords in England came into force on 1 April 2015. The regulator remains the Homes and Communities Agency but the new regulatory framework is now made up of:

(1) *regulatory requirements* – which registered social housing providers need to comply with;

(2) *codes of practice* – which can amplify any economic standard to assist registered providers in understanding how compliance might be achieved; and

(3) *regulatory guidance* – providing further explanatory information on the regulatory requirements and indicating how the regulator will carry out its role of enforcing the requirements.

The formal decision implementing the new framework is set out in *HCA Decision Instrument Number 8: Revisions to the Regulatory Framework for Social Housing in England* (HCA, January 2015). The regulator has published a new online guide giving an overview of its role and objectives: *Policy paper: A guide to regulation of registered providers* (HCA, May 2015).

HUMAN RIGHTS

Article 3

■ Hudorovič and others v Slovenia

App Nos 24816/14 and 25140/14, 8 April 2015

The applicants lived in an informal Roma

settlement together with some 80 other people. The land – on which the Roma community settled 30 years ago – was owned by the local council. The applicants lived in a caravan and had no access to basic infrastructure such as water, sewage, sanitation and electricity. They collected water from a cemetery or the nearby polluted water stream or else they acquired it from other houses. Moreover, due to the lack of sanitation services, the applicants had to use the area around the caravan for defecation; hence, they could not maintain their privacy, dignity or an appropriate level of hygiene, all of which contributed to frequent health problems.

The European Court of Human Rights (ECtHR) has invited the parties to consider whether there is a violation of article 3 and/or article 8 of the European Convention on Human Rights (the convention) on account of the applicants' living conditions.

Article 1 of Protocol No 1

■ Gošović v Croatia

App No 37006/13,
17 April 2015

The applicant was the landlord of a flat. A court refused to order the protected tenant living in the flat to vacate it and ordered that the tenant only had to pay a protected rent much lower than the market rent.

The ECtHR has asked the government to consider whether this amounts to a violation of the applicant's right to peaceful enjoyment of his possessions guaranteed by article 1 of Protocol No 1.

■ SL and JL v Croatia

App No 13712/11,
7 May 2015

SL and JL were sisters, born in 1987 and 1992. In June 1997, represented by their mother VL, they bought a villa and the adjacent courtyard in a seaside neighbourhood. In October 2001, a lawyer representing VL and other family members submitted a request to a social welfare centre seeking authorisation for a real estate swap agreement which involved the sisters acquiring a four-room flat on the fourth floor of a residential building in return for the villa. After interviewing VL, the centre gave its authorisation for the swap agreement. In November 2004, the sisters, represented by their legal guardian, brought an action in the Municipal Court asking the court to declare the swap agreement null and void, complaining that the villa was worth approximately €300,000 and the flat was worth no more than €70,000. In April 2005, the Municipal Court dismissed the action. Appeals were also dismissed. Before the ECtHR, the sisters alleged a violation of their property rights under article 1 of Protocol No 1.

The ECtHR found that there had been a violation of article 1 of Protocol No 1. Although 'the essential object of Article 1 of Protocol No 1 is to protect the individual against unjustified interference by the State with the peaceful enjoyment of his or her possessions, it may also entail positive obligations requiring the State to take certain measures necessary to protect property rights, particularly where there is a direct link between the measures an applicant may legitimately expect from the authorities and his or her effective enjoyment of his or her possessions' (para 58). A fair balance must be struck between the demands of the general interests of the community and the requirement to protect the individual's fundamental rights. Where children are involved, their best interests must be taken into account. The sisters could legitimately have expected the domestic authorities to take measures to safeguard their rights. The civil courts had failed to appreciate the particular circumstances of the case and dismissed the sisters' civil action solely on the grounds that the centre's decision authorising the swap agreement had not been challenged in the administrative proceedings. The ECtHR found that the domestic authorities had failed to take the necessary measures to safeguard the proprietary interests of the sisters, as children, and to afford them a reasonable opportunity to challenge effectively the measures interfering with their rights guaranteed by article 1 of Protocol No 1. However, the assessment of any pecuniary damage was not ready for decision.

POSSESSION CLAIMS

Trespassers

■ Jones and another v Persons Unknown and another

[2014] EWHC 4691 (Ch),
20 November 2014

Terence Neal Jones and his son were the freehold owners of land which was occupied by anti-fracking protestors who constructed wooden structures and pitched a number of tents. Almost a month afterwards, they issued a claim for possession in the Manchester District Registry of the Chancery Division of the High Court, rather than in the local county court. The proceedings were accompanied by a certificate as required by CPR 55.3(2) which stated that they had been issued in the High Court because the claim was against protestors and there was a substantial risk of public disturbance. The claim form was served five days after issue, but at least two days before the hearing. Brian Morgan, one of the protestors, was joined as a defendant. He argued that the claim should be transferred to the Mold District Registry because some of the protestors wished the proceedings to be conducted in Welsh and that was not legally possible in Manchester.

HHJ Hodge QC, sitting as a judge of the High Court, found that there had been due service and that the claimants had established their title to the land. He was also satisfied, on the evidence, that there was justification for issuing the proceedings in the High Court. After hearing Morgan and a McKenzie friend, he was not satisfied that any genuine dispute to the possession claim had been raised. Any suggestion of an express, or even an implied, licence or consent was 'really fanciful'. After referring to *Manchester Ship Canal Developments Ltd v Persons Unknown* [2014] EWHC 645 (Ch), 10 March 2014, he concluded that there was simply no prospect of the defendants establishing any defence to the possession claim on convention grounds. He refused a request for an adjournment and made an order for possession. However, HHJ Hodge refused to make an order for costs against Morgan. After referring to his own decision in *Wensley v Persons Unknown* [2014] EWHC 3702 (Ch), 8 October 2014, he stated that the costs of the hearing would have been incurred in any event, and had not been materially increased by Morgan putting himself forward as a named defendant. However, '[i]t may be that in the future, those who take a similar stance will be at the receiving end of an order for costs in favour of the claimants' (para 20).

Smoking

■ Appeal of Friedhelm Adolfs

German Federal Supreme Court (BGH),
18 February 2015

Friedhelm Adolfs was aged 76 and had been a tenant for 40 years. His landlady sought and obtained a possession order based on alleged nuisance which consisted of Adolfs's smoking cigarettes in his flat with the smoke and smell of tobacco seeping under his front door into communal areas and causing offence to neighbours. He appealed, arguing that his flat was not completely sealed and he could not help it if smoke seeped under the door to public areas.

The Federal Supreme Court doubted the lower court's finding that this issue was bad enough to have 'disturbed domestic peace' in the building. It set aside the possession order.

ASSURED SHORTHOLD TENANCIES

Tenancy deposits

■ Kirk v Singh

2015SCDUMF27,
Sheriffdom of South Strathclyde, Dumfries and Galloway at Dumfries,
26 February 2015

Dilbagh Singh, acting through an agent, let a property for an initial period of six months from 31 January 2013. A deposit of £380 was paid, but not protected in an approved scheme until August 2014. It was repaid when the tenant left. The tenant sought a sanction for non-compliance with the Tenancy Deposit Schemes (Scotland) Regulations 2011 SSI No 176.

After considering *Tenzin v Russell* [2015] CSIH 8A, *Fraser v Meehan* 2013 SLT (Sh Ct) 119 and *Jenson v Fappiano* 2015 GWD 4-89, Sheriff Jamieson stated that the sanction should be 'fair, proportionate and just', having regard to the seriousness of non-compliance. There was nothing to suggest that there was wilful default on the part of the defender or that he had systematically been in default in respect of a number of tenancies. Although ignorance was no excuse, it was a factor to be taken into account in the exercise of judicial discretion. Furthermore, the tenancy had now ended and the deposit had been returned. The defender's default could be characterised as serious, but was not at the most serious end of the scale. Sheriff Jamieson ordered the defender to pay £500.

Harassment and eviction

Damages

■ Croft and another v Moon

Hastings County Court,
11 February 2015[2]

In September 2013, the defendant landlord let a three-bedroom chalet bungalow to a couple (the claimants) with two children on a six-month assured shorthold tenancy. The claimants paid a deposit of £650. That deposit was not protected in accordance with the provisions of Housing Act (HA) 2004 ss213–215 until late December 2013. There was disrepair, starting with a missing tile to the roof and a broken window. The electricity cut out more than once, affecting the light, heating and hot water. In late November 2013, an environmental health officer emailed the defendant with an extensive list of works which were required. The defendant adopted a pattern of calling at the property without giving notice to the claimants and treated the property as his own without taking into account the covenant of quiet enjoyment. On occasion, he let himself in during the claimants' absence. He swore unpleasantly at the claimants and was gratuitously offensive to them. During winter storms, the roof suffered damage and one of the bedroom ceilings came down. On 1 February 2014, the defendant served a HA 1988 s21 notice. Although the claimants intended to move out, they discovered that if they left, they would be considered intentionally homeless. When they did not move out, the defendant, in an aggressive and angry fashion, threatened to remove the roof. He then unloaded bricks into the garden. The claimants were excluded from the property and brought a claim for damages for unlawful eviction, breach of covenant for quiet enjoyment and return of their deposit.

District Judge Barbara Wright found that the defendant's actions were calculated to bring profit for himself from his intended immediate development of the property. She awarded damages of £1,500 for harassment and £3,900 for unlawful eviction calculated at £100 per day until the claimants were rehoused by the local authority. She also awarded aggravated damages of £1,000 and exemplary damages of £3,000. She ordered return of the deposit and damages under the HA 2004 of three times its amount.

CONTEMPT OF COURT

■ Brown v Haringey LBC

[2015] EWCA Civ 483,
14 May 2015

Ronald Brown lived with a woman who was a secure council tenant. A possession order was made for arrears of rent and anti-social behaviour. An injunction was also granted, with a power of arrest, prohibiting them both from committing various acts of nuisance and anti-social behaviour. Brown was arrested for alleged breaches. The judge gave directions for a committal hearing some four weeks later (after the eviction had been carried out). Brown attended but was unrepresented, having tried but failed to obtain legal aid. The case ran over to a second day when he failed to appear. The judge found a large number of breaches proven. Brown was sentenced to 18 months' immediate imprisonment in his absence.

His appeal was allowed. The judge had not adequately considered whether he wanted representation and why he had not got legal aid, and should have adjourned either the hearing or the sentencing. The Court of Appeal directed an immediate release and set out the inadequate and tortuous arrangements for legal aid funding for committal applications in the county court.

HMO LICENCES

■ R (Rotherham Action Group Ltd) v Rotherham MBC

[2015] EWHC 1216 (Admin),
30 April 2015

The council proposed that selective licensing should be considered in its area and a formal statutory consultation was undertaken. In July 2014, an Improving Places Commission recommended a landlord-led voluntary scheme as an alternative. A council report in December 2014 considered both the landlord-led voluntary scheme and selective licensing, and recommended the latter. The council then designated four areas for selective licensing with boundaries significantly different from those consulted on and the number of properties covered substantially reduced.

Stewart J rejected an application for judicial review of that decision. There had been sufficient consultation and proper consideration of alternatives.

■ Manchester CC v Wenner

Manchester Magistrates' Court,
30 April 2015

The defendant landlord successfully applied for a licence for his HMO in 2007. When the licence expired in 2012, he claimed the property was no longer licensable as there were fewer than five occupants. When council officers found eight people living at the property, the defendant agreed to submit an application for a licence. The application was incomplete and ineffective. He was prosecuted. He was fined £15,000 and ordered to pay £1,823.75 costs, with a £120 victim surcharge.

■ Clark v Manchester CC

[2015] UKUT 129 (LC),
27 March 2015

The appellant was a private landlord operating an HMO. He carried out works to the house and asked the council to vary his licence to increase the permitted number of tenants from five to six. The council refused on the grounds that a bedroom in the house did not meet minimum space requirements.

A tribunal upheld the council's decision but Martin Rodger QC, deputy president of the Upper Tribunal, allowed an appeal. The lower tribunal had failed to conduct a complete rehearing of the issue as to whether the licence should be varied but had simply confined itself to a review of the council's decision. The judgment also considers the minimum size issue.

HOME LOSS AND COMPENSATION PAYMENTS

■ Obichukwu v Enfield LBC

[2015] UKUT 64 (LC),
16 February 2015

Patricia Obichukwu sought compensation for the loss of her tenancy following the making of a compulsory purchase order. The council said that the tenancy had been surrendered before the entitlement to compensation arose. She had given her keys back to the council (her landlord). It had accepted them and had required her to remove her possessions.

Martin Rodger QC, deputy president of the Upper Tribunal, reviewed the law relating to surrender by operation of law, as explained in *Woodfall's Law of Landlord and Tenant* at para

17.018. He held that the acts of both parties had the necessary unequivocal quality and that the tenancy had been determined by such a surrender. Further, the council's conduct did not create a legitimate expectation on the tenant's part that negotiations over the amount of compensation she would receive would continue.

CRIMINAL PROSECUTIONS

Harassment

■ R v Hill

Norwich Crown Court,
27 February 2015

The defendant was a private landlady. She let a property to tenants but later subjected them to harassment after they asked for defects to be repaired.

She was convicted after a jury trial. Recorder Pugh fined her £2,000 with £2,500 costs. He also made a 10-year restraining order which prohibited her from engaging in further harassment.

■ Hammersmith & Fulham LBC v Dow

City of London Magistrates' Court,
13 February 2015

Kathryn Dow was a private landlady. Her tenants returned home to find that she had removed their belongings and changed the locks. She claimed there had been a carbon monoxide leak and that she had booked the tenants into a hotel. No such leak was found. It was later discovered that she had booked the tenants' belongings into a self-storage facility before the date of the claimed leak. Two days after the locks were changed, new tenants were moved in.

She was found guilty of illegal eviction and given a six-month prison sentence, suspended for two years, with £10,794 in costs and compensation.

In a separate civil claim against Dow, heard at West London County Court, one of the original tenants was also awarded £13,970 damages towards their lost deposits, interest and court costs.

■ Swindon Council v Shem

Swindon Magistrates' Court,
6 February 2015

The defendant was a private landlord. He granted a six-month fixed-term tenancy but, after a few months, told the tenants that he wanted them to leave because he had found other tenants willing to pay a higher rent. They returned home at 8 pm one evening to find the door blocked by three men, one of whom was so aggressive that he was arrested. On entry, the tenants found all their belongings had been removed and the locks had been changed. They were too scared to remain. The defendant failed to appear at court to answer a charge of illegal eviction contrary to the Protection from Eviction Act 1977 and an arrest warrant was issued. He was arrested on returning to the UK.

He pleaded guilty and was sentenced to 12 weeks' immediate imprisonment.

■ R v Jones and Angus

Newcastle Crown Court,
5 February 2015

Peter Jones was a private landlord. Robert Angus was his friend. They went to the home of a tenant in arrears with rent. They pushed him to the ground in front of his child before repeatedly kicking and stamping on him, knocking out three of his teeth.

Following guilty pleas to assault occasioning actual bodily harm, the defendants were sentenced to 18 months' and 15 months' imprisonment respectively.

Fire, gas and safety

■ West Midlands Fire Authority v Singh

Leamington Crown Court,
1 April 2015

Fire broke out in a house let by the defendant landlord. There were no fire alarms or fire doors but there were 16 people living in nine rooms. The defendant pleaded guilty to eight charges of breaching fire safety regulations and a further offence of obstructing a fire inspector following the incident.

He was sentenced to nine months' immediate imprisonment and ordered to pay £7,436 costs.

■ Lancashire Fire and Rescue Service v De'Ath

Blackpool Magistrates' Court,
25 March 2015

The defendant was a private landlord of three houses. Five fire safety offences were identified in relation to each of them, namely: no fire risk assessment; inadequate fire separation throughout all premises; inadequate means of giving warning in case of fire; inadequate provision of emergency lighting; and inadequate fire evacuation procedures. Other breaches of the Regulatory Reform (Fire Safety) Order 2005 SI No 1541 included combustible materials on the means of escape and incorrect fastenings on a final exit door. The defendant pleaded guilty to 18 offences. He was fined a total of £72,000, with costs of £8,700 and a victim surcharge of £120.

■ London Fire Brigade v Rana

Kingston Crown Court,
1 May 2015

The defendant was the landlady of an HMO. In 2011, there was a serious fire in which one tenant died and many others were rescued. On the day of the fire, brigade inspectors found no fire detectors or smoke alarms and no firefighting equipment. They also found that no proper fire risk assessment was in place for the property. They immediately issued a prohibition notice, preventing use of the property as residential accommodation until fitted with suitable fire separation, adequate fire detection and emergency lighting.

The defendant was sentenced after having been found guilty of four offences as follows: (1) failure to make a suitable and sufficient assessment of risk, £40,000 fine; 200 hours' unpaid work (concurrent); (2) failure to appropriately equip premises with fire detection, £40,000 fine; 200 hours' unpaid work (concurrent); (3) failure to equip premises appropriately with fire fighting equipment, £40,000 fine; 200 hours' unpaid work (concurrent); and (4) failure to ensure that persons can evacuate premises as quickly and safely as possible, £40,000 fine; 200 hours' unpaid work (concurrent). In addition to the total fines of £160,000, she was ordered to pay £40,000 prosecution costs.

HOUSING ALLOCATION

Local Government Ombudsman

■ Complaint against Newham LBC

Complaint No 13 017 558
10 February 2015

The complainant (X) was terminally ill. His condition severely limited his mobility and he used a wheelchair. He and his partner lived in unsuitable private rented accommodation. He could not climb the stairs to get to the bedrooms, WC and bathroom on the first floor. He slept downstairs in the living room and used a commode. He had to strip wash in the living room. His landlord refused consent for major adaptations to make the property suitable for his needs, so he applied to the council for an allocation of social housing. There was an initial delay by the council from August to November 2013 in registering the application. The council's occupational therapist then assessed X's housing needs in December 2013 and presented a report in January 2014. The council failed to act on the report until December 2014, when it awarded emergency medical priority.

The Local Government Ombudsman found that there had been fault by the council which had caused X serious injustice. The council agreed to pay him £4,200 (calculated on the basis of the £350 per month tariff that the ombudsman's guidelines recommend for a disabled adult who has remained in unsuitable accommodation without access to bathing facilities).

HOMELESSNESS

Priority need

■ **Hotak v Southwark LBC**
■ **Kanu v Southwark LBC**
■ **Johnson v Solihull MBC**

[2015] UKSC 30,
13 May 2015,[3]
(2015) Times 25 May

Craig Johnson was a single homeless man with a history of drug abuse and incarceration. Sifatullah Hotak and Patrick Kanu were homeless disabled men dependent on the help of other members of their households. Applying the *Pereira* test (*R v Camden LBC ex p Pereira* (1998) 31 HLR 317, CA), the councils decided none of the men was 'vulnerable': HA 1996 s189(1)(c). On their three appeals from the Court of Appeal against the dismissal of challenges to those decisions, the Supreme Court decided that the *Pereira* test did not correctly state the law on vulnerability. In practice, it had led to statistical comparisons between applicants and street homeless people.

The correct question to ask was simply whether an applicant was at greater risk of harm than an ordinary person who might become homeless. That had nothing to do with statistical material or a council's own pressures on resources. Everyone might be expected to suffer some harm if they became homeless, so 'vulnerable' simply meant a greater degree of harm than that which an ordinary person in normal health might experience.

If the applicant was disabled or had another protected characteristic, the council also had to take into account the public sector equality duty under the Equality Act 2010 in making its assessment.

On such assessment, a council was entitled to have regard to the availability of help on which the applicant could call (whether from his family or otherwise).

Johnson's appeal was dismissed on the facts. Kanu's appeal was allowed. The court agreed to receive further submissions on the correct disposal of the Hotak appeal.

Intentional homelessness

■ **Haile v London Borough of Waltham Forest**

[2015] UKSC 34,
20 May 2015

In October 2011, while pregnant, Saba Haile surrendered her tenancy of a bedsit in a hostel for single people and moved to other insecure accommodation. In November 2011, she was asked to leave because of overcrowding. She then applied to Waltham Forest for homelessness assistance. In February 2012, she gave birth to a baby daughter. In August 2012, the council decided that she had become homeless intentionally. In January 2013, a reviewing officer found that she had surrendered her tenancy of the room in the hostel and, in consequence, had ceased to occupy accommodation which was available for her occupation, and which it would have been reasonable for her to continue to occupy until she gave birth: HA 1996 s191. Appeals were dismissed by the county court and the Court of Appeal ([2014] EWCA Civ 792, 13 June 2014; July/August 2014 *Legal Action* 55).

On a further appeal to the Supreme Court, Haile argued that the birth of her baby broke the chain of causation between her deliberately leaving the hostel and her state of homelessness when her application was considered. She invited the court, if necessary, to depart from the House of Lords' decision in *Din v Wandsworth LBC* [1983] 1 AC 657.

The Supreme Court held that *Din* had been correctly decided and remained good law but there must be a continuing causal connection between the deliberate act satisfying the statutory definition of 'intentional' homelessness, and the homelessness existing at the date of the council's decision. In this case, the appeal was allowed by a majority (4:1) because the reviewing officer did not consider whether the cause of Haile's current state of homelessness was her surrender of her tenancy. The birth of the baby had meant that she would be homeless, at the time her application was considered, whether or not she had surrendered the tenancy. It was actual events which had materialised post-dating departure from the last accommodation that were important.

HOUSING AND COMMUNITY CARE

■ **R (Whapples) v Birmingham Crosscity Clinical Commissioning Group**

[2015] EWCA Civ 435,
29 April 2015

The claimant was a tenant of Midland Heart (a housing association) in Birmingham. She was severely disabled. Her flat was no longer suitable for her needs. She wished to move to larger accommodation (sufficient to accommodate a carer) in a different part of the country. The clinical commissioning group (CCG) was willing to co-operate with her landlord and with local housing authorities to facilitate a move to alternative rented accommodation but the claimant contended that it was for the CCG to provide her with free accommodation under National Health Service Act 2006 s3(1)(b), which provides that:

A clinical commissioning group must arrange for the provision of the following to such extent as it considers necessary to meet the reasonable requirements of the persons for whom it has responsibility …

(b) other accommodation for the purpose of any service provided under this Act.

It was common ground that 'other accommodation' could include ordinary private residential accommodation for which the NHS would have the power to pay but the CCG denied that, on the facts, it was under a duty to provide such accommodation itself. Sales J dismissed an application for a judicial review of that decision ([2014] EWHC 2647 (Admin), 30 July 2014; September 2014 *Legal Action* 50) and the claimant appealed, relying on the *National Framework for NHS Continuing Healthcare and NHS-Funded Nursing Care 2012* (Department of Health, November 2012).

The Court of Appeal dismissed the appeal. It held the relevant statutory guidance did not dictate the outcome for which the appellant contended. The duty claimed under the NHS Act 2006 was not made out. Burnett LJ said:

Effectively there has been a standoff brought about by the appellant. She has declined offers of assistance in seeking alternative accommodation unless the offer includes an acceptance on the part of the CCG to provide it or fund it. In the meantime, and contrary to her own best interests, she has continued to decline any assistance with her care. As the judge observed, in these circumstances the CCG was entitled to conclude either that the appellant has no reasonable requirement for accommodation provided or funded by the NHS, or that it is not necessary to provide it (or both). There is every reason to suppose that, with the appellant's co-operation, suitable alternative accommodation will be found for her (para 42).

1 www.judiciary.gov.uk/subject/contempt-of-court/
2 Jo Holden, solicitor, Holden and Co, Hastings.
3 See also Supreme Court redefines vulnerability in homelessness cases, page 21.

Nic Madge is a circuit judge. Jan Luba QC is a barrister at Garden Court Chambers, London, and a recorder. They would like to hear of relevant housing cases in the higher or lower courts. The authors would like to thank the colleague at note 2.